

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

Notice of Intended Action

Proposing rule making related to general procedures, elections, collective bargaining and providing an opportunity for public comment

The Public Employment Relations Board (PERB) hereby proposes to amend Chapter 2, “General Practice and Hearing Procedures,” Chapter 3, “Prohibited Practice Proceedings,” Chapter 6, “Negotiations and Negotiability Disputes,” Chapter 7, “Impasse Procedures,” Chapter 8, “Internal Conduct of Employee Organizations,” Chapter 12, “Public Records and Fair Information Practices (Uniform Rules),” Chapter 13, “Mediators,” Chapter 14, “Arbitrators”; rescind Chapter 15, “Retention and Recertification Elections,” and adopt a new Chapter 15 with the same title; and amend Chapter 16, “Electronic Document Management System,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 20.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 20.

Purpose and Summary

This Notice of Intended Action proposes to amend rules relating to general procedures of the agency, impasse procedures, bargaining unit determination and representative certifications, retention and recertification elections, elections fees, filing of electronic documents including certified employee organization annual reports, collective bargaining agreements, mediators, and arbitrators. The agency proposes the following amendments after feedback, internal review, and implementation of new data management systems.

Item 1 strikes a cross-reference to a subrule that is proposed to be rescinded in **ARC 6913C**, IAB 2/22/23.

Item 2 removes the requirement that the Governor be included in service of notices since the Department of Administrative Services is already included in services. Serving the Office of the Governor is redundant. Item 2 also requires PERB to serve the Executive Director of the Board of Regents if the Board of Regents is a party to a filing. Due to its size, scope, and structure, the Board of Regents requested to be added to service of notices.

Item 3 gives the agency the ability to utilize a court reporter and pass fees on to the nonprevailing party. This practice has already been a requirement for certain types of cases under PERB’s jurisdiction, and this amendment gives PERB and its practitioners the option to use it for all cases. This amendment also creates uniformity in PERB’s procedures.

Item 4 adds a requirement that parties requesting a preliminary ruling for a negotiability dispute provide a concise explanation of the request and also includes clarification that the issue may be delegated by PERB to an administrative law judge. This provides flexibility and efficiencies while preserving the appeal rights of the requestors.

Item 5 restructures rule 621—6.6(20) and adds a subrule enforcing employer upload of a contract in accordance with Iowa Code section 20.29(2). This amendment requires employers to signify a unit as public safety or transit unit upon upload. The employee representative and the agency will be notified upon designation of public safety or transit status. If both parties agree, the agency will take official notice. Transit units are not subject to retention and recertification elections.

Item 6 changes the method of request for mediations services from email to secure upload PERB (suPERB) and requires requesting parties to indicate whether the parties intend to utilize mediation

services or are using the impasse request as a means to notify the agency that contract negotiations have commenced. Some employee organizations prefer to notify the agency that contract negotiations have commenced as is required in private sector collective bargaining governed by National Labor Relations Board (NLRB). This rule gives such employee organizations representing both private and public employees the option to maintain consistent internal compliance processes and notifies the assigned mediator that, while assigned, the mediator is not likely to be utilized.

Item 7 moves the filing of arbitration requests from email to suPERB.

Items 8 and 9 clarify that the filings relating to objections shall be filed in the electronic document management system (EDMS). These are cases that are likely to require legal attention and therefore should be entered into the agency's EDMS, which is intended for legal case and document management.

Items 10 through 14 move the filing of employee organization registration reports, constitutions, bylaws, amendments to said documents, and annual reports to suPERB.

Item 15 clarifies that, while other internal documents for employee organizations will be filed in suPERB, documents relating to trusteeships will be filed in EDMS.

Items 16 and 17 clarify storage of PERB documents and move the agency away from paper files.

Item 18 eliminates the PERB training requirement for mediators. The requirements imposed on mediator applicants for PERB approval are sufficient. Further, no one has sought training in recent years, PERB has not utilized ad hoc mediators in several years, requests for impasse services have decreased 62 percent, mediated settlements have decreased 61 percent, and, of the mediations currently being requested, roughly 70 percent are from unions who are simply putting the agency on notice. The Federal Mediation and Conciliation Service (FMCS) provides mediation services for free.

Item 19 updates a cross-reference to reflect the change made in Item 18.

Item 20 eliminates the PERB training requirement for arbitrators. The requirements imposed on arbitrator applicants for PERB approval are sufficient. No one has sought training in recent years, and the requests for arbitrator services have reduced 80 percent since 2016.

Item 21 updates a cross-reference to reflect the change made in Item 20.

Items 22 and 23 reduce the fee for arbitrators listed on PERB's roster and streamline the process to maintain inclusion on the list. Chapter 14 retains a quality control component. It is unnecessary and burdensome to force an arbitrator who has previously been approved and presented no quality control issues to reapply to PERB for inclusion on the roster. The fee and fee schedule changes make inclusion on the roster for previously approved arbitrators more efficient and make PERB monitoring of the list simpler.

Item 24 updates a cross-reference to reflect the change made in Item 20.

Item 25 rescinds and replaces Chapter 15. New language fixes dates for retention and recertification elections and attempts to provide clarity to all parties pertaining to which bargaining units will be subject to retention and recertification elections with the maximum amount of notice. With a consistent and streamlined contract upload process through suPERB, parties will know with certainty which bargaining unit will be required to vote in any given year. Disallowing the practice of extensions and altering of election dates removes a great deal of confusion and makes the chapter significantly easier to administer.

Many employers fail to submit a list as required for retention and recertification elections, resulting in an automatic recertification of a bargaining unit. While the employer and employee representative may very well agree that a retention and recertification election is unnecessary at best, it remains current Iowa law. In order to efficiently administer retention and recertification elections, PERB believes it is necessary to provide clarity. Further, the clarifications provided in the new Chapter 15, along with the completion and use of suPERB for filing, gives the employers and employee organizations significantly more time to work on voter lists through suPERB in advance of the dissemination of the Notice of Intent to Conduct an Election on August 1.

Fees will no longer be fixed based on advance forecasted voter turnout. Voter turnout for elections where the bargaining units are State of Iowa employees have dropped to half of their potential turnout. The drop can be attributed to missing contracts, failure to upload contracts, extensions, and failure to turn in voter lists. With clarification and better technology, PERB can now determine the election fee earlier and, with this ability, PERB can now codify a fee structure that will hold the per voter fee paid by the

employee organization to the lowest possible assessment. While some employee organizations whose units consistently extended or failed to turn in lists may now be required to pay more, other employee organizations with large units that do not escape biannual elections will likely see a decrease in the aggregate amount they are assessed.

The requirement of employers to participate in the dissemination of notices has been removed. There is no empirical evidence that suggests employer postings or transfer of information impacts the outcome in the election. Retention and recertification elections are, in large part, a question of the relationship between the bargaining unit and employee organization. While it is necessary for employers to provide a list to employee organizations, a requirement that the employer has regardless of an election, the employers do not need to have a role in the election outside of the determination of the list. Employer posting of notices creates confusion and friction and potential liability between employee organizations and employers. In return, the placement of the notices has a negligible impact on the elections, at best. The language is permissive, and objections to the elections are still available.

Employees in bargaining units with transit employees receiving federal funding are not subject to retention and recertification election. This change allows PERB to designate and remove transit units from recertification elections.

Item 25 strikes language referring to Chapter 8. All documents relating to internal conduct other than documents pertaining to the establishment of trusteeships will be filed in suPERB. Documents related to trusteeships will be filed in EDMS.

Items 26 and 27 define “EDMS” and “suPERB” and provide general guidelines for usage.

Item 28 clarifies that Chapter 16 applies to EDMS.

Item 29 rescinds the requirement for the placement of a publicly accessible terminal at the agency’s office. There is no demonstrated usage or demand by the public; PERB staff have the capacity to assist members of the public if necessary.

Item 30 adds instructions and guidelines for the registration and usage of suPERB.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

These rules do not provide for a waiver of their terms but are instead subject to the agency’s general waiver provisions found in rule 621—1.9(17A,20).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by PERB no later than 4:30 p.m. on March 24, 2023. Comments should be directed to:

Erik Helland
Public Employment Relations Board
Jessie Parker Building, Suite 1B
510 East 12th Street
Des Moines, Iowa 50319
Phone: 515.281.4414
Email: iaperb@iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

March 20, 2023
10 a.m. to 12 noon

Via videoconference

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the agency at iaperb@iowa.gov. The agency will then supply the link to attend the videoconference.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 621—2.4(20) as follows:

621—2.4(20) Intervention and additional parties. Any interested person may request intervention in any proceeding before the public employment relations board. An application for intervention shall be in writing, except that applications made during a hearing may be made orally to the hearing officer, and shall contain a statement of the reasons for such intervention. When an application for intervention is filed regarding a petition for bargaining representative determination, 621—subrules 4.3(2), 4.4(4), 5.1(2), 5.5(2), and 5.5(4) shall apply.

Where necessary to achieve a more proper decision, the board or administrative law judge may, on its own motion or the motion of any party, order the bringing in of additional parties. When so ordered, the board shall serve upon such additional parties all relevant pleadings and allow such parties a reasonable time to respond thereto where appropriate.

ITEM 2. Amend paragraph **2.15(1)“d”** as follows:

d. Upon the state of Iowa, or board, commission, council, office or agency thereof, by serving the ~~governor or the~~ director of the department of administrative services or the executive director of the board of regents.

ITEM 3. Adopt the following **new** rule 621—2.25(20):

621—2.25(20) Costs of certified shorthand reporters and transcripts.

2.25(1) Initial payment. The agency may arrange for a certified shorthand reporter to report the contested case hearing and request that an original transcript of the hearing be prepared by the reporter for the agency's use. The agency initially shall pay the reporter's reasonable compensation for reporting the hearing and producing the agency-requested transcript.

2.25(2) Taxation as costs. The cost of reporting and of the agency-requested transcript shall be taxed as costs against the nonprevailing party or parties although the presiding officer, or the board on appeal or review of a proposed decision and order, may apportion such costs in another manner if appropriate under the circumstances.

2.25(3) Payment of taxed costs. Following final agency action in a case, the agency will prepare and serve a bill of costs upon the party or parties against whom the costs have been taxed. Those parties shall, within 30 days of such service, remit to the agency the amount specified in the bill of costs. Sums remitted to the agency shall be considered repayment receipts as defined in Iowa Code section 8.2.

ITEM 4. Amend subrule 6.3(3) as follows:

6.3(3) Preliminary ruling. The agency will give priority to a petition for expedited resolution of a negotiability dispute. Parties ~~may~~ will file ~~briefs~~ informal position statements no longer than ten pages in support of their positions within the time specified by the agency, and the agency may set the matter for oral argument. The agency or appointed administrative law judge may issue a preliminary ruling, without analysis, that the proposal is mandatory, permissive, or prohibited.

ITEM 5. Amend rule 621—6.6(20) as follows:

621—6.6(20) Filing of agreement.

6.6(1) Copy of agreement. A public employer shall file a copy of the collective bargaining agreement entered into between the public employer and a certified employee organization and made final under Iowa Code chapter 20. The public employer shall file the copy within ten days of the date on which the agreement is entered into.

6.6(2) Failure to upload an agreement. If an employer fails to upload a finalized collective bargaining agreement within ten days of expiration of the previous collective bargaining agreement, the agency will order an in-person show cause hearing at the agency. The agency may grant appropriate accommodation in the form of more time or take official notice of failure to comply with subrule 6.4(1) and Iowa Code section 20.29(2).

6.6(3) Transit units. When uploading a contract, an employer will designate a unit as public safety or transit if appropriate. The agency and employee organization will receive notification of the designation. Upon agreement from both parties or absent an agreement or ruling from the agency in a contested hearing, the agency will designate the unit appropriately in suPERB.

ITEM 6. Amend subrule 7.3(1) as follows:

7.3(1) Request for mediation. ~~Either party to an impasse may email to the agency a request to appoint a mediator to the impasse request that the agency assign a mediator by requesting mediation services. Requests for mediation services shall be uploaded through suPERB.~~

~~A copy of the request for mediation shall be emailed to the agency and shall, in addition to the~~ The request for mediation, must contain:

a. to f. No change.

g. A statement from the requesting party indicating whether the parties anticipate utilizing mediation services or the parties are putting PERB on notice that the employer and employee have commenced bargaining for a new contract.

ITEM 7. Amend subrule 7.5(2) as follows:

7.5(2) Form and contents of request. The request for arbitration shall be ~~emailed~~ uploaded to the agency through suPERB and shall include the name, address, email address, and signature of the requesting party and the capacity in which the requesting party is acting.

ITEM 8. Adopt the following **new** subrule 7.6(5):

7.6(5) Objections. Objections and relevant documents to the objection shall be filed in the electronic document management system (EDMS).

ITEM 9. Adopt the following **new** subrule 7.7(7):

7.7(7) EDMS. Negotiability disputes concerning state employees and relevant documents to the objection shall be filed in EDMS.

ITEM 10. Amend rule 621—8.1(20) as follows:

621—8.1(20) Requirements. Before the agency certifies an employee organization as the exclusive representative of a bargaining unit, the employee organization shall ~~electronically file~~ upload in suPERB a registration report, constitution and bylaws, and an annual report. Once certified, the certified employee organization shall thereafter file an annual report as required by rule 621—8.4(20) and a registration report and constitution and bylaws whenever its constitution or bylaws are amended as required by rules 621—8.2(20) and 621—8.3(20).

ITEM 11. Amend subrule 8.2(3) as follows:

8.2(3) *Method of filing.* The registration report shall be ~~electronically filed~~ uploaded in suPERB pursuant to 621—Chapter 16.

ITEM 12. Amend subrule 8.3(3) as follows:

8.3(3) *Method of filing.* The constitution and bylaws shall be ~~electronically filed~~ uploaded in suPERB pursuant to 621—Chapter 16.

ITEM 13. Amend subrule 8.4(2) as follows:

8.4(2) *Form and content.* The annual report shall be on the form prescribed by the board and uploaded in suPERB and shall contain:

a. to *g.* No change.

ITEM 14. Amend subrule 8.4(3) as follows:

8.4(3) *Method of filing.* The annual report shall be ~~electronically filed~~ uploaded in suPERB pursuant to 621—Chapter 16.

ITEM 15. Amend subrule 8.6(4) as follows:

8.6(4) *Method of filing.* The application and any required reports shall be electronically filed in the electronic document management system (EDMS) pursuant to 621—Chapter 16.

ITEM 16. Amend rule 621—12.12(17A,20,22) as follows:

621—12.12(17A,20,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 621—12.1(17A,20,22). Unless otherwise stated, the authority for this agency to maintain the record is provided by Iowa Code chapter 20, the statutes governing the subject matter of the record, and the enabling statutes of the agency, where applicable. The record systems maintained by the agency are:

12.12(1) and 12.12(2) No change.

12.12(3) Retention and recertification election case files. These files contain information which pertains to the conduct of a retention and recertification election. A person, employee organization or public employer may file the documents contained in this type of case. Case files include pleadings, notices, voter lists, tally of ballots, orders, challenges, and objections. Cases contain personal information of the representatives. Further personal information may be included in testimony, exhibits, and other documents. The public employer is required to send to the agency a listing of employees eligible to vote in the recertification elections, ~~and the representatives are emailed eligible employees' personal information. Cases are contained within the agency's electronic document management system and the agency's network.~~ The files located on the agency's network may contain materials which are confidential as attorney work product, shows of interest, settlement offers and mediators' notes. Some materials are confidential under other applicable provisions of law. Copies of documents filed in these cases may be obtained through the agency or the agency's electronic document management system.

12.12(4) and 12.12(5) No change.

12.12(6) Contract negotiation impasse files. These files contain information which pertains to the public employer and certified employee organization's negotiations. An employee organization or public employer may file the documents contained in the file. The records may include the request for impasse services, assignment of a mediator, interest arbitration list, selection letters, and correspondence regarding mediation and interest arbitration hearings. Mediators may maintain assigned impasse files which contain confidential documents related to the mediation. Files contain personal information of the representatives. ~~The case files are paper, and each impasse is recorded in an agency database.~~ The files are maintained by the agency and are indexed by the bargaining unit number. Electronic files will be kept for up to five years following the close of the arbitration. Copies of the documents contained in the files may be obtained through the agency.

12.12(7) Neutral files. The agency maintains biographical data on qualified mediators and arbitrators. A mediator's file contains an application, an acceptance letter, and the yearly mediator

contract. An arbitrator's file contains an application, an acceptance letter, renewal applications, biographical sketches, letters of recommendation, a résumé, and decisions. Neutral files may also contain concerns expressed by employees or employer and employee organization representatives, material related to agency-conducted investigations, and information on hearings and decisions issued by the agency. Cases contain personal information of the representatives and may contain personal information of the petitioner or respondent if the petitioner or respondent is an individual. Further personal information may be included in testimony, exhibits, and other documents. Neutral files contain personal information of the neutral and may contain personal information of employees and employer and employee organization representatives if they provide written comments regarding a neutral. ~~The neutral files are paper.~~ The files may contain materials which are confidential as attorney work product, settlement offers and mediators' notes. Some materials are confidential under other applicable provisions of law. The files are maintained by the agency and are commonly indexed by the neutral's last name. Biographical sketches of neutrals are located on the agency's website. Copies of documents contained in these files may be obtained through the agency.

12.12(8) Employee organization files. Employee organizations are required to file certain documents with the agency prior to certification and annually. An employee organization's representative files the documents contained in the file. The records include the certified employee organization's constitution and bylaws, amended constitution and bylaws, registration reports, annual reports, correspondence, bargaining unit description and subsequent amendments. The employee organization files contain personal information of the representatives. Further personal information may be included in testimony and exhibits. ~~The employee organization files are both on paper and contained within the agency's electronic document management system. The employee organization files are both on paper and contained within the agency's electronic document management system~~ Employee organization files are electronic and can be located in suPERB. The files are maintained by the agency and are indexed by the certified employee organization in paper files and by certified employee organization number if the files are on the agency's electronic document management system. Copies of the documents contained in these files may be obtained through the agency or the agency's electronic document management system.

12.12(9) No change.

12.12(10) Public safety unit determination case files. These files contain information which pertains to whether a bargaining unit is a public safety unit. An employee organization or public employer may file the documents contained in this type of case. Such files contain documents concerning the agency's determination of that question. The records may include pleadings, notices, orders, exhibits, transcripts, docket sheets, general correspondence, attorneys' notes, memoranda, research materials, and information compiled under the direction of the agency. Cases contain personal information of the representatives and may contain personal information of employees. Further personal information may be included in testimony, exhibits, and other documents. Cases are contained within the agency's electronic document management system or suPERB. If the case went to hearing, the hearing may have been recorded by mechanical means, and a copy of the recording may be available. The files are maintained by the agency and are indexed by the case number. The files may contain materials which are confidential as attorney work product, settlement offers and mediators' notes. Some materials are confidential under other applicable provisions of law. Copies of documents or hearing recordings filed in these cases may be obtained through the agency or the agency's electronic document management system.

12.12(11) Other Iowa Code chapter 20 case files. These files contain information which pertains to objections which an employer or employee organization may make when impasse procedures are not completed prior to the applicable deadline for completion of impasse procedures, challenges which an employee organization or employer may make when the voter eligibility is challenged, and challenges which an employee organization may make postelection in retention and recertification elections. An employee organization or public employer may file the documents contained in this type of case. Further personal information may be included in testimony, exhibits, and other documents. Such files contain documents concerning the agency's determination of the question. The records may include

pleadings, notices, orders, exhibits, transcripts, docket sheets, general correspondence, attorneys' notes, memoranda, research materials, and information compiled under the direction of the agency. Cases contain personal information of the representatives and may contain personal information of employees. Cases are contained within the agency's electronic document management system or suPERB. If the case went to hearing, the hearing may have been recorded by mechanical means, and a copy of the recording may be available. The files are maintained by the agency and are indexed by the case number. The files may contain materials which are confidential as attorney work product, settlement offers and mediators' notes. Some materials are confidential under other applicable provisions of law. Copies of documents or hearing recordings filed in these cases may be obtained through the agency ~~or the agency's electronic document management system~~.

12.12(12) and 12.12(13) No change.

12.12(14) Personnel files. The agency maintains files containing information about agency employees and applicants for positions with the agency. The files contain payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information may be confidential under Iowa Code sections 22.7(11) and 22.7(18). ~~Personnel files are paper files.~~

12.12(15) Litigation files. These files or records contain information regarding litigation or anticipated litigation which involves the agency. The records include pleadings, briefs, docket sheets, documents, general correspondence, attorneys' notes, memoranda, research materials, and investigation materials. Litigation files ~~are~~ may be paper files and may be kept up to five years in paper format or replaced immediately in electronic format if possible. The files are indexed by the name of the opposing party or case number. The files contain materials which are confidential as attorney work product. Some materials are confidential under other applicable provisions of law. Persons who wish to obtain copies of pleadings and other documents filed in litigation should obtain these from the clerk of the appropriate court which maintains the official copy.

ITEM 17. Amend rule 621—12.13(17A,20,22) as follows:

621—12.13(17A,20,22) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 621—12.1(17A,20,22). The records listed may contain information about individuals. Unless otherwise designated, the authority for this agency to maintain the record is provided by Iowa Code chapter 20, the statutes governing the subject matter of the record, and the enabling statutes of the agency, where applicable. All records are stored ~~both on paper and in automated data processing systems~~ electronically unless otherwise noted.

12.13(1) to 12.13(4) No change.

ITEM 18. Rescind and reserve subrule **13.4(6)**.

ITEM 19. Amend subrules 13.4(8) and 13.4(9) as follows:

13.4(8) Exemption. Persons on the agency's professional staff and mediators employed by FMCS shall not be required to submit an application for listing and shall be deemed as meeting all criteria set forth in subrules 13.4(3) through ~~13.4(6)~~ 13.4(5) throughout the duration of their employment with the agency or FMCS.

13.4(9) Grandfather clause. Any person listed prior to November 5, 2014, shall be deemed as meeting all criteria set forth in subrules 13.4(3), and 13.4(4) ~~and 13.4(6)~~.

ITEM 20. Rescind and reserve subrule **14.5(6)**.

ITEM 21. Amend subrule 14.5(7) as follows:

14.5(7) Exemption. Applicants who qualify for and complete the agency's interest arbitrator mentorship program, as outlined in rule 621—14.6(20), shall be exempt from the criteria set forth in subparagraph 14.5(4) "a"(1) ~~and subrule 14.5(6)~~.

ITEM 22. Amend subrule 14.5(8) as follows:

14.5(8) *Duration of listing.* Listing on the roster shall be for a term of ~~three years~~ one year, renewable by payment of a fee of \$50.

ITEM 23. Amend subrule 14.5(9) as follows:

14.5(9) *Renewal application.*

a. ~~The board shall notify a roster member not less than 120 days before the expiration of the member's three-year~~ roster members on September 1 before the expiration of their one-year term of the procedures necessary to continue inclusion on the roster requirement to pay their annual fee or be designated inactive.

b. A roster member desiring to renew the member's listing must submit ~~a written application to the board not less than 60 days before the expiration of the member's three-year term~~ the appropriate fee.

c. ~~When reviewing a renewal application, the board shall consider the following criteria, plus any other relevant information, in determining whether to renew the person's listing:~~

(1) ~~Demonstration of the requisite knowledge and abilities as listed in subrule 14.5(3);~~

(2) ~~Acceptability, which may be based on the agency's records that show the number of times the arbitrator's name has been proposed to the parties and the number of times the arbitrator has been selected. Such cases will be reviewed for extenuating circumstances, such as the arbitrator's length of time on the roster or prior history;~~

(3) ~~Timeliness of decisions;~~

(4) ~~Feedback from the parties; and~~

(5) ~~Attendance at agency-sponsored events, including conferences and trainings.~~

d. ~~Within 60 days of receipt of the completed application, the board shall issue and serve in accordance with 621—subrule 2.15(2) a written decision granting or denying the renewal application.~~

(1) ~~If renewal is granted, the roster member shall remit payment of the annual listing fee in accordance with subrule 14.3(4).~~

(2) ~~If renewal is denied, the renewal applicant may request reconsideration of the denial within 14 days of issuance of the denial. The board shall hold a hearing conducted in accordance with 621—Chapter 2 within 60 days of the request for reconsideration and shall issue its final ruling within 30 days of the hearing. Absent a timely request for reconsideration, the board's denial of the renewal application becomes final, and the arbitrator shall be removed from the roster.~~

ITEM 24. Amend subrule 14.5(10) as follows:

14.5(10) *Grandfather clause.* Any arbitrator listed on the roster prior to November 5, 2014, shall be deemed to meet all criteria set forth in subrules 14.5(3), and 14.5(4), ~~and 14.5(6)~~ for up to three years following November 5, 2014. For purposes of renewal, the agency shall divide arbitrators listed on the roster on November 5, 2014, into three groups with staggered renewal dates and will notify the members of each group when their renewal applications are due.

ITEM 25. Rescind 621—Chapter 15 and adopt the following **new** chapter in lieu thereof:

CHAPTER 15

RETENTION AND RECERTIFICATION ELECTIONS

621—15.1(20) General procedures. When an employer and certified employee organization are parties to a collective bargaining agreement, the agency shall conduct an election, prior to the expiration of a collective bargaining agreement between an employer and a certified employee organization, to determine if the employees in a represented bargaining unit wish to retain and recertify the unit's certified representative. The agency shall determine the date of the election or election period and the place, method, and other procedural aspects of conducting a retention and recertification election held pursuant to Iowa Code chapter 20. Elections shall be conducted under the direction and supervision of the agency or its election agent and shall be by secret ballot.

Official notices relevant to the election will be delivered through secure upload PERB (suPERB). Notification of events requiring attention of parties shall be produced by suPERB. The election fee shall be calculated and delivered to employee representatives through suPERB.

Employers and certified employee organizations shall have a representative or agent for service listed in suPERB and the electronic document management system (EDMS). Employers and certified employee organizations have a continuing duty to update the representative or agent for service in suPERB and EDMS. Employees in a bargaining unit designated as a transit unit will not be subject to retention and recertification elections.

621—15.2(20) Election calendar.

15.2(1) *Fall election.*

a. The fall election shall be conducted by electronic voting provided for by a vendor selected by the agency.

b. The fall election shall commence on the Monday of the first full week in October at 8 a.m. and shall apply to all collective bargaining agreements which expire the following year on June 30 or on a date between 270 and 365 days after the end of the election.

c. Voting in the fall election shall cease at 12 noon on the second Friday following the commencement of the election.

15.2(2) *Spring election.*

a. The spring election shall be carried out by mail ballot.

b. The spring election will end with the tallying of the ballots on the Tuesday of the third full week in March and shall apply to all collective bargaining agreements that expire the following year on a date between 270 and 365 days after the end of the spring election. Ballots shall be mailed not later than March 3.

15.2(3) *Date of the election.* For the purposes of this chapter, the date of an election shall be the date on which the ballots were tallied.

The board will determine which bargaining units are subject to retention and recertification election in the immediate state fiscal year based on the contract uploaded to suPERB as of July 15. Changes or extensions to contracts uploaded to suPERB after July 1 will not alter the date of the election. If a collective bargaining agreement indicates the agreement is for a term of one year but does not clearly specify the effective commencement and termination dates, the agency will presume the collective bargaining agreement is for a term of one year commencing July 1 and ending June 30 unless the agreement clearly states an alternate term and effective dates.

621—15.3(20) General election procedures.

15.3(1) *Notice of intent to conduct an election.* PERB will issue a notice of intent to conduct an election on August 1 to both the employer and employee representatives designated in suPERB.

15.3(2) *Initial filing of approved list by employer.* When the agency files a notice of intent to conduct a retention and recertification election, the employer shall, within 15 days of the notice, submit to the agency through suPERB an alphabetical list of the names; addresses; email addresses, if known; telephone numbers, if known; and job classifications of the employees in the bargaining unit. When a telephonic/web-based election is ordered, the list of eligible voters shall also include the employee's date of birth, the last four digits of the employee's social security number and any other information required by the agency. If the employer uploaded a current list of employees and their relevant information in the designated bargaining unit satisfying this subrule prior to August 1, the employer will approve the previously uploaded list in suPERB. For spring elections, this date will be January 1.

15.3(3) *Failure to upload an employee list.*

a. If an employer fails to upload and approve a voter list by August 10, the agency will order an in-person show cause hearing prior to August 13. The agency may provide reasonable accommodation to extend the upload period up to three days after the hearing in cases of demonstrated inability to create and upload a list beyond the control of the employer. For spring elections, this date shall be January 15 and January 18 or the first business day following.

b. Providing the employer an extension will automatically provide the employee organization an extension of a commensurate number of days.

c. The agency may take official notice of a failure to comply with subrule 16.3(2) and Iowa Code chapter 20.

d. Failure of an employer to upload a list will result in automatic recertification of the bargaining unit.

15.3(4) *Employer organization approval of the list.*

a. An employee organization shall have until August 31 to approve an eligible voter list. Eligible voters are those employees who were employed and included in the bargaining unit on August 31. For spring elections, employee organizations have until February 1. Eligible voters are those on the list as of February 1. There will be no addition to the list after August 31 and February 1.

b. An employee organization shall utilize suPERB to suggest modifications to the list. The employer shall promptly review changes and make appropriate changes to the list when in agreement. The employer shall securely upload any mutually agreed upon amended list to the agency's secure upload filing system prior to the close of the list. Intentional or unreasonable obstruction by either party of list amendment shall be grounds for election objection.

c. If an employer of a respective bargaining unit fails to upload a list and the board grants an extension, the employee organization shall be granted the same extensions for approval of eligible voters.

d. If an employee organization fails to approve a voter list by August 31, the agency will order a show cause hearing prior to September 5. The agency may provide reasonable accommodation to extend the upload period up to three days after the hearing in cases of demonstrated inability to suggest changes and approve an eligible voter list. For spring elections, the applicable dates will be January 15 for list submission and January 20 for a hearing if necessary.

e. If the employee organization fails to approve a list by September 8 for fall elections or February 5 for spring elections, the agency will use the list currently uploaded to suPERB.

15.3(5) *Employer's responsibility.*

a. It is the employer's responsibility to maintain accuracy of the list. It is the employer's responsibility to add or remove any employees who become employed or are no longer employed by the employer up until the list is final.

b. For any employees on the final list who become unemployed prior to the close of the election, the employer shall notify PERB and the employee organization. If, after the tally of the ballot, the removal of the voter would be outcome determinative, PERB will re-tally the ballots as if the employee who is no longer employed was never on the list.

15.3(6) *Final voter list.* The final voter list will be the contents of the list uploaded to suPERB as of September 10. No additions or subtractions will occur after this day. This is the list used to calculate the election fee. The date for a final voter list for spring elections will be February 10.

621—15.4(20) Election fee.

15.4(1) *Computation of election fee.*

a. *Fall election fee.* PERB will post on September 10 the total number of eligible voters, the fee applied per eligible voter, and the amount each employer organization is responsible for on the PERB website. The total number of voters in the election shall be the sum of all the eligible voters in all of the bargaining units subject to retention and recertification in the fall election. The calculation of the fee shall be as follows: The price of the election vendor (\$54,000), minus carryforward from the previous year, divided by the rate established by the total number of eligible voters as of September 1 of the current year. If the voter list contains or exceeds 10,000 voters but does not exceed 14,999 voters, the fee shall be \$5.30 per voter. If the voter list contains or exceeds 15,000 voters but does not exceed 19,999 voters, the fee shall be \$3.53 per voter. If the voter list contains or exceeds 20,000 voters but does not exceed 24,999 voters, the fee shall be \$2.65 per voter. If the voter list contains or exceeds 25,000 voters but does not exceed 29,999 voters, the fee shall be \$2.12 per voter. If the voter list contains or exceeds 30,000 voters but does not exceed 34,999 voters, the fee shall be \$1.77 per voter. If the voter list contains or exceeds 35,000 voters but does not exceed 39,999 voters, the fee shall be \$1.51 per voter. If the voter list contains or exceeds 40,000 voters but does not exceed 44,999 voters, the fee shall be \$1.32 per voter. If

the voter list contains or exceeds 45,000 voters but does not exceed 49,999 voters, the fee shall be \$1.18 per voter. If the voter list contains or exceeds 50,000 or more voters, the fee shall be \$1.06 per voter.

b. Spring election fee. The fee for spring elections shall be the greater of \$3 per voter or \$50 per bargaining unit. Employee organizations will be notified by suPERB on February 10 of the required fee and will have 14 days to pay in person or by certified mail. Checks will be considered received by the certified postmark date.

15.4(2) Employee organization responsibility for the fee.

a. The employee organization is responsible for and shall prepay the election fee in accordance with this chapter. PERB will send notice to employee organizations through suPERB on September 10 of the amount due for each specific bargaining unit based on the number of eligible voters on the final list in a unit times the fee determined in subrule 15.4(1).

b. For spring elections, the final date for payment shall be February 24.

15.4(3) Failure to pay election fee. Failure to pay the election fee by the deadline shall result in an automatic revocation.

15.4(4) Election cost shortfall. If the amount submitted in aggregate for all elections occurring in the current year does not exceed the amount due for services provided by a designated election vendor, PERB may pay the difference and assess the amount to the election in the following year.

15.4(5) Refunds. The agency will not refund the election fee in the event the election is paid and the agency has performed duties to conduct the election but the election does not occur.

621—15.5(20) Election notice and electioneering. Following the agency's receipt of the applicable election fee from the certified employee organization, the agency will file an order directing a retention and recertification election in suPERB. Notice shall be provided to the employer representative and employee representative. The employer may distribute, electronically or by hard copy, the notice to the affected employees. The employer may also post the notice in the manner and locations customarily used for the posting of information to employees. If the employer chooses to post notice, such notices may contain a sample ballot or script and shall set forth the dates of the election period and the time, place, method, and purpose of the election; the employer must remain neutral in the language, posting, and election process.

621—15.6(20) Tallying and certification of results.

15.6(1) Ballots. Ballots shall contain the question, "Do you want [name of certified employee organization] to be retained and recertified and continue to be your exclusive bargaining representative?" followed by the choices "Yes" or "No."

15.6(2) Recertifying employee organization. Upon completion of a valid retention and recertification election in which an employee organization received the votes of a majority of employees in the bargaining unit, the agency shall file an order recertifying the employee organization as the exclusive bargaining representative of the employees in the bargaining unit. This notice shall be filed in suPERB and be available to both the employer and employee representative.

15.6(3) Decertifying employee organization. Upon completion of a valid retention and recertification election in which an employee organization did not receive the votes of a majority of employees in the bargaining unit, the agency shall file an order decertifying the employee organization as the exclusive bargaining representative of the employees in the bargaining unit. The unit remains as a bargaining unit. The contract ceases to exist. The included job classifications of the bargaining unit that failed to be recertified shall be unable to vote for two years from the date of the completion of the election in which the unit voted to decertify.

15.6(4) Inoperable voting system. The board may extend the period of the election due to inoperable voting systems.

15.6(5) Alternate voting method. When a voter promptly informs the agency of the voter's inability to cast a ballot using the designated methods of voting, the agency shall assist the voter in using an alternate method to cast a secret ballot.

621—15.7(20) Objections.

15.7(1) *Objection and notice regarding notice of intent to conduct an election.*

a. The certified employee organization or public employer may file an objection asserting that the election should not be conducted for reasons set forth in the objection. The objection shall be in writing and electronically filed in EDMS no later than seven days following the date of the notice of intent to conduct an election. The agency may conduct a preliminary investigation of the objection and determine if the objection has merit. The agency may informally resolve objections and will dismiss objections without merit. The agency will schedule hearings for all other objections. Hearings on objections shall be conducted pursuant to 621—Chapter 2. The objecting party shall present its evidence first.

b. If the agency fails to file a notice of intent to conduct an election, the public employer or certified employee organization may file with the agency in suPERB a notice asserting the election should be conducted for reasons set forth in the notice. The notice shall be electronically filed no later than seven days following the date the notice of intent to conduct an election should have been filed pursuant to the retention and recertification election schedule as set forth by the agency. The parties shall submit to the agency all relevant information requested. The agency shall conduct an investigation to determine whether the election is required by statute and rule.

15.7(2) *Voter eligibility challenges.*

a. General. A party may challenge, for good cause, the eligibility of any voter. The agency shall attempt to resolve the challenge. Whenever challenged ballots are unresolved and determinative of the outcome of an election, a hearing to determine the eligibility of the challenged voter(s) shall be scheduled and conducted. After the conclusion of the hearing, the board may, if necessary, determine the appropriate remedy, which may include ordering a new election, and the cost of the new election may be taxed to the nonprevailing party.

b. Methods and timing of voter eligibility challenges. A party may challenge the eligibility of a voter by electronically filing a completed voter eligibility form in suPERB and in accordance with the following:

(1) In-person elections. A party shall challenge a voter's eligibility prior to the time the voter deposits the voter's ballot in the ballot box. In the event of a challenge, the challenged voter may mark the ballot in secret and the election agent shall segregate the ballot by causing it to be placed in a challenged-ballot envelope with appropriate markings and depositing it in the ballot box.

(2) Mail-ballot elections. A party shall challenge a voter's eligibility prior to the time the outer envelope containing the voter's secret envelope and ballot is opened. In the event of a challenge, both the secret envelope and the outer envelope shall remain sealed until the challenge is resolved.

(3) Telephonic/web-based elections. A party shall challenge a voter's eligibility at least seven days prior to the commencement of the election period for telephonic/web-based elections.

c. Postelection challenges. A certified employee organization may make postelection challenges to the total number of bargaining unit employees for their respective retention and recertification elections. The certified employee organization may file a postelection challenge in EDMS to the number of bargaining unit employees if an eligible voter has left employment and is no longer in the bargaining unit prior to the close of the election or election period. The employee organization shall file in EDMS this postelection challenge within ten days of the filing of the tally of ballots. The agency shall attempt to resolve the dispute. Whenever postelection challenges are unresolved and determinative of the outcome of an election, a hearing to determine whether an eligible voter left employment and was no longer in the bargaining unit prior to the close of the election or election period shall be scheduled and conducted. The board may make appropriate adjustments to the tally or order a new election based on the board's findings and conclusions.

d. Objections to an election. 621—subrule 5.4(2) contains information about objections to an election.

621—15.8(20) Spring elections. Spring elections will be conducted with mail-ballot election procedures described in 621—subrule 5.3(2). The ballots will be mailed by the agency no later than February 21.

621—15.9(20) Elections not 270 days to 365 days after fall or spring election. If the date of expiration of a collective bargaining agreement requires an election not 270 days to 365 days after the fall or spring election, suPERB will immediately alert the agency, the employer and the employee representatives. In this event, PERB will within 14 days establish a future date of election to be held beginning on a Monday of the first full week in an appropriate month that allows for compliance with Iowa Code section 20.15(2) “a.” All applicable dates will be established upon the selection of the election time period and will follow the same general procedures and timelines described in this chapter.

621—15.10(20) Transit units. Units recognized as transit units under Iowa Code section 20.32 and designated as such in suPERB pursuant to 621—subrule 6.6(3) will not be served a notice of intent to conduct an election. If a transit unit does receive a notice in error, the unit may immediately petition the board to be removed from the election. The agency may informally determine the unit’s transit status and remove the unit from the recertification election. Once a transit determine has been made, the unit shall be considered transit by default unless designated otherwise.

These rules are intended to implement Iowa Code chapter 20.

ITEM 26. Amend rule 621—16.1(20) as follows:

621—16.1(20) Effective date and scope. This chapter governs the filing of documents in all proceedings before the agency, or those proceedings converted to electronic proceedings upon the board’s order. ~~This chapter also governs the filing of all documents required to be filed by employee organizations pursuant to 621—Chapter 8.~~ To the extent the rules in this chapter are inconsistent with any other administrative rule of the board, the rules in this chapter shall govern.

ITEM 27. Amend rule **621—16.2(20)**, definition of “EDMS,” as follows:

“EDMS” means the electronic document management system, the agency’s electronic filing and case management system, generally used for the collection and storage of documents related to cases likely to proceed to hearing or contested cases.

ITEM 28. Adopt the following new definition of “SuPERB” in rule **621—16.2(20)**:

“SuPERB” means a web interface database used by the board for the secure upload of various documents generally related to elections, the internal conduct of employee organizations, contracts, and the dissemination of notices related to elections.

ITEM 29. Amend rule 621—16.3(20) as follows:

621—16.3(20) Registration Electronic document management system (EDMS) registration, username, and passwords.

16.3(1) to 16.3(4) No change.

ITEM 30. Rescind subrule **16.4(6)**.

ITEM 31. Adopt the following new rule 621—16.14(20):

621—16.14(20) Secure upload PERB (suPERB) registration, username, and password. SuPERB is the document management system used to upload and file documentation related to elections, internal conduct of employee organizations, contracts, impasse requests, and other documents as prescribed by the agency.

16.14(1) Registration.

a. Registration required. Employers, certified employee organizations, and bargaining units must ensure the necessary individuals representing their interest at the agency are registered and their information updated appropriately. Every individual filing documents or downloading filed documents must register as a registered user of suPERB.

b. How to register. To register, a user must request the creation of an account from the agency.

c. Registration complete. When the registration process is completed, the registered user will be assigned a username and password and the registered user may utilize suPERB.

d. Changing passwords. Once registered, the user may change the user's password. If the registered user believes the security of an existing password has been compromised, the registered user must change the password immediately. The agency may require password changes periodically.

e. Changes in registered user's contact information. If a registered user's email address, mailing address, or telephone number changes, the user must promptly make the necessary changes to the registered user's information contained in suPERB. The registered user shall promptly give notice of changes in contact information to any nonregistered party in every active proceeding in which the registered user is a party.

f. Duties of registered user. Each registered user shall ensure that the user's email account information is current, that the account is monitored regularly, and that email notices sent to the account are timely opened.

g. Agency-initiated registration. The agency may complete the registration process on behalf of an individual in certain instances and email the username and password to the user. When the agency completes the registration process, the user is required to promptly log in and change the password. Following initial notification regarding account registration, the user is required to promptly update and maintain accurate contact information for a suPERB account.

16.14(2) Use of username and password. A registered user is responsible for all documents filed with the user's username and password unless proven by clear and convincing evidence that the registered user did not make or authorize the filing.

16.14(3) Username and password security. If a username or password is lost, misappropriated, misused, or compromised, the registered user of that username/password shall notify the agency promptly.

16.14(4) Denial of access. The agency may refuse to allow an individual to electronically file or download information in suPERB due to misuse, fraud or other good cause.

16.14(5) Public access. All documents publicly available and contained within suPERB will not require a user account to access. The public-facing search portal provides access to public documents and is searchable free of charge.